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January 30, 2017

By Facsimile Only

Alberta Court of Appeal

TransCanada Pipelines Tower, 2600

450 1st - Street. S. W.

Calgary, Alberta T2P 5H1

Facsimile 403-297-5294

Attention: I Moore - Deputy Registrar - Court of Appeal - Calgary

Dear Deputy Registrar Moore:

McDonald v. Brookfield et al

Court of Appeal File Number 1501-0131AC

1. As we have previously stated, we have been instructed to file an Application for Leave to Appeal and we have filed a Complaint with the Canadian Judicial Council.
2. Since our request for a copy of the Appeal Hearing transcript has been refused, could you please verify that the attached email string dated July 03, 2008 is an exact duplicate of the

evidence admitted to the trial record by the Appeal Panel.

3. On the original email string, the additions to the email were capitalized and then bolded in blue and the deletions were marked by strike out..
4. Our deadline to file the Application for Leave to Appeal is February 01, 2017 to allow a few days grace period. Thank you!

Yours truly,

John McDonald

cc: Norton Rose Fulbright Canada LLP

400 Third Avenue SW

3700 Canterra Tower

Calgary, Alberta T2P 4H2

Facsimile 403-264-5973

Attention: Howard Gorman - Counsel - Brookfield

From: Eng, Rick <reng@brookfield.com>
Sent: July-03, 2008 15:36
To: John A. Clarke
Cc: Reid, Jim; rowed@birchmountain.com
Subject: RE:

Categories: Repository

We refer to section 9.17 of our loan agreement re: Publicity.

See our changes below, per our discussion.

From: John A. Clarke [<mailto:clarkej@birchmountain.com>]
Sent: Thursday, July 03, 2008 2:13 PM
To: Eng, Rick
Subject:

This might be faster...just edit thisand I was asked to remind you that our counsel advised us that if you allow Computershare to go ahead with the payment today no news release is necessary....

CONVERTIBLE UNSECURED SUBORDINATE DEBENTURES

CALGARY, July 3, 2008 - Birch Mountain Resources Ltd. ("**Birch Mountain**" or the "**Company**") (**BMD: TSX and AMEX**) announces that it has not made the scheduled June 30, 2008, interest payment to the holders of the Convertible, Unsecured Subordinate Debentures. As a consequence of ~~it~~ **THE COMPANY** being in breach of a ~~single minor loan~~ **FINANCIAL** covenant under its senior secured credit facility, **THE LENDER, TRICAP PARTNERS LTD. HAS EXERCISED ITS RIGHT UNDER THE LOAN AGREEMENT TO DIRECT COMPUTERSHARE TRUST COMPANY NOT TO MAKE THE SCHEDULED INTEREST PAYMENT UNTIL FURTHER NOTICE FROM THE LENDER. BIRCH MOUNTAIN** ~~which it is working to rectify~~ **THE BREACH AND SECURE THE NECESSARY LIQUIDITY TO MAKE THE INTEREST PAYMENT.** ~~the Company has applied to and is waiting for its secured lender, Tricap Partners Ltd., to authorize release of the interest payment by Computershare Trust Company.~~

John Clarke, FCA
Vice President - Finance & CFO
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